

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition
of
WESSAM M. Wafa
for Redetermination of Deficiency or for Refund of New York
State and New York City Personal Income Tax under Article 22
of the Tax Law and the Administrative Code of the City of New
York for the Year 2017.

: DETERMINATION
: DTA NO. 829735

Petitioner, Wessam M. Wafa, filed a petition for redetermination of deficiency or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2017.

A virtual hearing via Cisco Webex was held on October 14, 2021, with all briefs to be submitted by September 1, 2022, which date began the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Robert Tompkins, Esq., of counsel).

After reviewing the entire record in connection with this matter, Nicholas A. Behuniak, Administrative Law Judge, renders the following determination.

ISSUES

- I. Whether petitioner met her burden of establishing her entitlement to the New York State and City earned income credits for 2017.
- II. Whether petitioner met her burden of establishing her entitlement to the Empire State child tax credit for 2017.

III. Whether petitioner met her burden of establishing her entitlement to the New York City school tax credits for 2017.

FINDINGS OF FACT

1. On or around February 10, 2018, petitioner, Wessam M. Wafa, filed a 2017 New York State resident income tax return, form IT-201 (2017 return), on which she filed as head of household and claimed two children, ages four and six as of December 31, 2017, as dependents. On the 2017 return, petitioner reported \$15,600.00 of earned business income and listed her occupation as “Baby Sitter.”

2. On her 2017 return, petitioner claimed \$2,550.00 of refundable credits as follows: (i) New York State earned income credit of \$1,634.00; (ii) the New York City earned income credit of \$281.00; (iii) the Empire State child credit of \$570.00; and (iv) New York City school tax credits of \$63.00 and \$2.00.

3. Prior to a refund being issued, the Division of Taxation (Division) sent petitioner an audit inquiry letter requesting: verification of the dependents claimed on her 2017 return; proof of any license, registration or certification needed for petitioner’s business; and verification of the income she reported on the return. Petitioner did not send a response to the Division’s request.

4. Because petitioner did not respond to the audit inquiry letter, the Division issued a notice of disallowance, dated January 2, 2019 (notice), denying petitioner’s \$2,550.00 refund request. The notice explained that because petitioner did not respond to the audit inquiry letter the refundable credits requested were disallowed.

5. Petitioner submitted a request for a conciliation conference to the Division’s Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice. A conciliation

conference was held on August 1, 2019, and BCMS issued an order, dated September 20, 2019, sustaining the notice.

6. Petitioner filed a petition with the Division of Tax Appeals in protest of the BCMS order and a videoconferencing hearing via CISCO Webex was held on October 14, 2021.

7. Included as an attachment to the petition was a letter from a doctor's office in Brooklyn, New York, indicating that petitioner's two claimed dependents were patients of the office and resided with petitioner at her Brooklyn, New York, address.

8. At the hearing, petitioner testified that she worked for another person as a babysitter and was paid in cash.

9. At the hearing, the Division indicated that it was still seeking proof of petitioner's 2017 income. The Division also indicated that with regard to the claimed dependents, based upon evidence petitioner had provided with the petition, the Division was now seeking copies of the birth certificates for petitioner's two claimed dependents.

10. The Division represented that it had contacted the Internal Revenue Service (IRS) and requested whether, for federal income tax purposes, petitioner had reported income from a third party for 2017. The Division represented that the IRS indicated that it had no record of petitioner reporting income from a third-party for 2017.

11. The record was left open for petitioner to provide birth certificates and proof of her 2017 income in the form of an affidavit or letter from the party that paid petitioner in 2017, indicating how much she was paid in 2017. The Division was also provided the opportunity to address the after-hearing submissions made by petitioner.

12. After the hearing, petitioner submitted copies of the birth certificates for the two individuals she claimed as dependents. The birth certificates established that the two claimed

dependents were petitioner's children and were the ages reflected on the 2017 return. In addition, petitioner provided a handwritten letter, dated October 21, 2021, from an individual who asserted:

"I am writing this letter to confirm that I have [sic] paying Wessam Wafa for babysitting my children since 2017. I currently pay her \$1,200.00 monthly for her services."

The letter did not specify what petitioner was paid in 2017. Although given the opportunity, the Division did not file a response to the petitioner's post-hearing submission of documentation.

CONCLUSIONS OF LAW

A. Tax Law § 606 (d) (1) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under the Internal Revenue Code (IRC) (26 USC) § 32. The New York City earned income credit is equal to five percent of the federal earned income credit under IRC (26 USC) § 32 (*see* Tax Law § 1310 [f] [1]; Administrative Code of the City of New York § 11-1706 [d] [1]). Since the New York State and City earned income credits are determined based solely upon a percentage of the federal credit, it is appropriate to refer to the provisions of the IRC to determine petitioner's eligibility for the earned income credit (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

The federal earned income credit, provided for pursuant to IRC (26 USC) § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer's "earned income," which includes earnings from self-employment (*see* IRC [26 USC] § 32 [c] [2] [A]). Thus, the State and City earned income credits require petitioner to prove the amount of her earned income (*see Matter of Espada*).

B. Petitioner bears the burden of proof to show a clear entitlement to the tax credits at issue (*see Matter of Golub Serv. Sta. v Tax Appeals Trib. of State of N.Y.*, 181 AD2d 216, 219 [3d Dept 1992]; *see also* Tax Law § 689 [e]). Here, the Division denied petitioner's claim for the earned income credits for 2017 because she failed to substantiate her business income as reported. Upon review of the record, it is clear that petitioner failed to prove her income for the year in issue. Petitioner did not produce sufficient books, records, or receipts to clearly show she generated the business income claimed on her returns or what that amount was. The letter petitioner provided post-hearing was not an affidavit and did not provide a dollar amount of what was allegedly paid in 2017. Without sufficient documentation to substantiate the claimed business income for the year in issue, petitioner has failed to meet her burden of proof to show that the Division's denial of the New York State and City earned income credits was erroneous (*see Matter of Espada*).

C. Tax Law § 606 (c-1) provides for a credit equal to the greater of one hundred dollars times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed to the taxpayer under IRC § 24 for the same taxable year for each qualifying child. On her 2017 return, petitioner claimed an Empire State child credit in the amount of \$570.00 for two qualifying children. On audit, the Division disallowed the Empire State child credit because petitioner failed to provide documentation substantiating her business income and birth certificates to verify the ages and relationship of the two qualifying children claimed on her return. After the hearing, petitioner provided the birth certificates for both claimed dependents establishing that petitioner had two qualifying dependents for purposes of the Empire State child credit. As noted above, petitioner has failed to substantiate her earned income for 2017. As petitioner failed to prove that she had any earned

income for the year 2017, she is not entitled to an Empire State child credit greater than a total of \$200.00, i.e. the minimum of \$100.00 per child. The Division is directed to grant petitioner a refund of the Empire State child credit in the amount of \$200.00.

D. Tax Law § 606 (ggg) authorizes a school tax credit applicable to full or part-time residents of the City of New York with income less than \$250,000.00 who cannot be claimed as a dependent on another taxpayer's federal income tax return. For persons filing as head of household or as a single taxpayer, the credit is \$63.00. Petitioner has established that she is a resident of New York City; however, she did not prove her earned business income for 2017. Additionally, to be entitled to the additional New York City school tax credit "rate reduction" amount, petitioner must have earned income (Tax Law § 606 [ggg] [4-b]). As petitioner has not shown any earned income, she is not entitled to either of these credits.

E. The petition of Wessam M. Wafa is granted in accordance with conclusion of law C but is otherwise denied. The Division of Taxation is directed to modify the notice of disallowance dated January 2, 2019, in accordance therewith.

DATED: Albany, New York
February 23, 2023

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE